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ATTORNEY FOR APPELLANT:

**IN THE
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE DEARBORN CIRCUIT COURT

1 As we have pointed out in *Lake County Board of Elections and Registration v. Copeland*, --- N.E.2d ---, No. 45A04-0710-CV-560, slip op. p. 5 (Feb. 27, 2008), and *Gilbert v. State*, 874 N.E.2d 1105, n.1 (Ind. Ct. App. 2007), we have recently become aware of some difficulties in receiving the prompt transmission of fully-briefed appeals to our court. Indeed, the case herein was deemed fully briefed in early April 2007, but was not transferred to our court until March 2008. We remind counsel that a link to the Clerk's online docket is available at <http://www.in.gov/judiciary/cofc/> and counsel may check the docket to confirm that the case has, in fact, been transmitted to this court after being fully briefed.

STATEMENT OF THE CASE

Appellant-Respondent, Violet Turnstall (Mother), appeals the trial court's involuntary termination of her parent-child relationship with her minor child, A.B.

We affirm.

ISSUE

Mother raises two issues on appeal, which we consolidate and restate as: Whether the trial court erred by determining that termination of the parent-child relationship was in A.B.'s best interests.

FACTS AND PROCEDURAL HISTORY

On July 2, 2004, Mother was convicted of dealing in cocaine and was sentenced to twenty years incarceration, of which fourteen years were suspended. She was placed on probation for fourteen years following her release on January 11, 2006. While incarcerated, Mother's minor daughter, A.B., born on August 15, 1991, was removed from the home by the Dearborn County Division of Child Services (DCS). A.B. was initially placed in the Youth Encouragement Services (YES) Home and then moved to foster care in June of 2006.

On January 10, 2006, a day prior to Mother's release from prison, the trial court conducted a review hearing in A.B.'s Child in Need of Services (CHINS) case. Upon her release from incarceration, Mother was ordered to obtain adequate housing and stable employment. She was to submit to random drug screens, attend counseling, and work with an intensive home based worker. After Mother was initially released, she visited A.B. in the YES Home and she communicated with her by phone calls and letters.

On April 10, 2006, Mother tested positive for cocaine. She voluntarily admitted herself to a detox program, which she completed. On or about May 10, 2006, due to her probation violation, a warrant was issued for Mother's arrest. Thereafter, on August 15, 2006, Mother's probation was revoked and she was sentenced to two years of incarceration.

On June 15, 2006, prior to Mother's revocation of probation, the DCS filed its Petition for Involuntary Termination of Parental Rights. The trial court conducted a fact finding hearing on October 16 and 17, 2006. The next day, the trial court issued its Order terminating the parent-child relationship, stating in pertinent part:

1. That it has been proved by clear and convincing evidence that the child has been in need of services for more than six months under a dispositional decree, dated October 3, 2005.
2. That it has been proved by clear and convincing evidence that there is a reasonable probability that the conditions which led to the removal of the child from the home will not be remedied, because the mother was incarcerated at the time of the child's removal and has been reincarcerated since that time.
3. The [c]ourt further finds that it has been proven by clear and convincing evidence that the continuation of the parent child relationship poses a threat to the well being of the child, in that the mother cannot provide a satisfactory and stable home environment for the child due to the mother's incarceration and substance abuse problems.
4. The [c]ourt finds that it has been proven by clear and convincing evidence that the termination of the parent child relationship is in the best interest of the child so the child can have a permanent, stable home.
5. That the DCS has a satisfactory plan for the care and treatment of the child in that the child will be placed for adoption and the child is successfully completing independent living services.

(Appellant's App. pp. 5-6).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother contests the trial court's determination that termination of the parent-child relationship is in A.B.'s best interests. In this regard, she presents us with a two-fold argument: (1) the trial court should have extended the CHINS wardship until Mother's release from prison and (2) Mother's criminal history is not sufficient to justify termination of her parental rights.

We note at the outset that the DCS has not filed an appellee's brief in this case. Where the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Id.*

In reviewing termination proceedings on appeal, we will not reweigh the evidence nor assess the credibility of the witnesses. *In re S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). This court will only consider the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or

inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

The involuntary termination of parental rights is the most extreme measure that a court can impose and is only designated as a last resort when all other reasonable efforts have failed. *Id.* at 880. This policy is in recognition of the Fourteenth Amendment to the United States Constitution which provides parents with the right to establish a home and raise children. *Id.* However, these protected parental rights are not absolute and must be subordinated to the child's interest to maintain the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish parents but to protect their children. *Id.* Although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Id.* To effect the involuntary termination of a parent-child relationship, the DCS must present clear and convincing evidence establishing that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under I.C. § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999 the child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

In support of her argument that the trial court should have extended the CHINS wardship, Mother relies on *Rowlett v. Vanderburgh Co. Office of Family and Children (OFC)*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. In *Rowlett*, Father had recently been released on drug-related charges and was in the process of establishing paternity to the minor children, when OFC took them in protective custody. *Id.* at 617-18. The children were then placed with the maternal grandmother. *Id.* at 618. Even though Father failed to appear at the initial CHINS hearing, he attended the subsequent hearing where he was granted supervised visitation with the children. *Id.* Shortly thereafter, Father was arrested for drug related charges. *Id.* He pled guilty and was incarcerated until June of 2005. *Id.* In the meanwhile, in October of 2003, the OFC filed petitions to terminate Father's parental rights. *Id.* Despite Father's multiple requests for continuance, the trial court scheduled the dispositional hearing on the petitions on April 12, 2005, six weeks before Father's scheduled release date. *Id.* Father appealed, contending that the trial court abused its discretion in denying his motion for continuance. *Id.* at 618-19. Father asserted that he wanted an

opportunity to become established in the community and to participate in services directed at reunification with his children. *Id.* at 619.

On appeal, we determined that as the OFC's plan was for the children to be adopted by their maternal grandmother, where they had been placed some three years earlier, granting the continuance would have had little immediate effect upon the children. *Id.* Furthermore, despite Father's lengthy criminal history and prior drug use, we found that the record included clear evidence of positive strides Father had made toward turning his life around. *Id.* at 622. He presented evidence of secure employment and stable housing waiting for him after his release. *Id.* He had been accepted at the University of Evansville and planned to continue counseling and other services to maintain sobriety. *Id.* Based on this evidence, we concluded that the trial court abused its discretion in denying his motion for continuance and we advised that the trial court should have reset the dispositional hearing after giving Father a sufficient period following his release to demonstrate his willingness and ability to assume parental duties. *Id.* at 620.

We find *Rowlett* to be inapposite to the case at hand. Unlike *Rowlett*, Mother was given a second chance to establish her parental skills after her incarceration. She was released on January 10, 2006, and provided with services geared towards reunification with A.B. Nevertheless, barely three months later, on April 10, 2006, she violated the terms of her probation by testing positive for cocaine. Furthermore, granting Mother's request would result in leaving A.B. in a temporary relationship pending termination of parental rights. At the moment, A.B. has left the YES home and is in foster care pending adoption proceedings. In *Rowlett*, we cautioned against continuation of the CHINS wardship where the child is in a

temporary arrangement pending termination of parental rights. *See id.* at 623. In effect, Mother is now asking this court to give her a third chance, which, based on the facts before us, we are not inclined to grant.

Next, Mother asserts that the trial court erroneously terminated her parental rights based on her criminal history. She focuses on her completion of classes during incarceration and her compliance with the case plan subsequent to her release. We have stated before that to determine whether conditions are likely to be remedied, the trial court must examine Mother's fitness to care for A.B. as of the time of the termination hearing and take into account any evidence of changed conditions. *In Re S.P.H.*, 806 N.E.2d at 881. At the same time, the trial court must evaluate Mother's patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*

Our review of the record indicates that the trial court did not err. Mother's incarceration for drug related charges led to the removal of A.B. Three months after her release, she violated her probationary terms which prohibited any substance abuse. Thus, the reason for A.B.'s removal from Mother's care has not been remedied. Furthermore, the family case manager testified that not only did Mother fail to obtain secure housing and stable employment, she also failed to attend several individual and family counseling sessions. Because Mother did not notify the caseworker of her frequent address changes, it was difficult to communicate with her. A.B.'s Guardian Ad Litem (GAL) testified that A.B. no longer believes her Mother can be a good parent to her because of the "many years of getting let down." (Transcript p. 45). The GAL added that since being removed from her

Mother's care, A.B.'s life has changed in a positive way. A.B. has indicated her desire to have the parent-child relationship terminated and be adopted.

In light of the evidence before us, Mother's continued substance abuse leads us to believe that there is a substantial probability of future neglect. *See In Re S.P.H.*, 806 N.E.2d at 881. Although she completed classes while incarcerated, her commitment to comply with the DCS' services after her release was minimal. Accordingly, we conclude that Mother failed to make a *prima facie* showing of reversible error. *See McGill*, 801 N.E.2d at 1251. Therefore, we affirm the trial court's termination of the parent-child relationship.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Mother's parental relationship with her minor child, A.B.

Affirmed.

BAKER, C.J., and ROBB, J., concur.